

CHAPTER 4:

# PRELIMINARY INQUIRIES, DIVERSION, CONSENT CALENDAR, AND FORMAL CALENDAR

**Juvenile Probation Officer and Caseworker  
Self-Instructional Manual**

JUVENILE PROBATION OFFICER AND CASEWORKER SELF-INSTRUCTIONAL MANUAL  
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## **Preliminary Inquiries**

At a preliminary inquiry the court conducts an informal review to determine appropriate action on a petition. Preliminary inquiries may be based on complaints signed and submitted by parents of a juvenile, school officials, or police officers, rather than on petitions signed and filed by the prosecuting attorney. MCR 3.903(A)(22).

The court may assign a referee to conduct a preliminary inquiry. Referees who conduct preliminary inquiries are not required to be licensed attorneys. MCR 3.913(A)(1); MCR 3.913(A)(2); MCL 712A.10.

Because a preliminary inquiry is not a proceeding on the formal calendar, no record of a preliminary inquiry is required to be made. There is no requirement that the judge or referee take testimony or examine evidence. The judge or referee is merely required to examine the petition and make his or her determination in accordance with MCR 3.932(A).

A preliminary inquiry must be conducted on the record if an offense enumerated in MCL 780.786b(1) of the Crime Victim's Rights Act is alleged. MCR 3.932(A).

## **Drug Treatment Courts**

Effective January 1, 2005, family divisions are authorized to institute or adopt a drug treatment court for juveniles. MCL 600.1062(2). A drug treatment court must permit a victim to submit a written statement to the court regarding whether a juvenile should be admitted into a drug treatment court.



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**DIVERSION**

**“Diversion”** is defined as the placement that occurs when a formally recorded apprehension is made by a law enforcement agency for an act by a minor which, if a petition were filed with the court, would bring the minor within the formal jurisdiction of the court under MCL 712A.2(a).

Instead of a petition being filed or authorized, however, either of the following occurs:

- “(i) the minor is released into the custody of his or her parent, guardian, or custodian and the investigation is discontinued, or
- “(ii) the minor and the minor’s parent, guardian, or custodian agree to work with a person or public or private organization or agency that will assist the minor and the minor’s family in resolving the problem that initiated the investigation.”  
MCL 722.822(c)(i)–(ii); MCL 722.823(1)(a)–(b).

The Juvenile Diversion Act may be used by law enforcement officials and court intake workers prior to the filing of a petition or before the court authorizes a petition.

MCL 722.823(1); MCR 3.932(A)(2); MCR 3.935(B)(3). However, once a petition is authorized, the act may no longer be used, the case must be placed on the formal calendar.



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**Offenses Precluding the Use of Diversion**

Juveniles accused of or charged with any of the following “assaultive offenses” shall not be diverted:

- felonious assault, violation in weapon-free school zone, MCL 750.82;
- assault with intent to murder, MCL 750.83;
- assault with intent to do great bodily harm less than murder, MCL 750.84;
- assault with intent to maim, MCL 750.86;
- assault with intent to commit a felony, MCL 750.87;
- assault with intent to rob while unarmed, MCL 750.88;
- assault with intent to rob while armed, MCL 750.89;
- first-degree murder, MCL 750.316;
- second-degree murder, MCL 750.317;
- manslaughter, MCL 750.321;
- kidnapping, MCL 750.349;



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**Offenses Precluding the Use of Diversion** *(continued)*

- prisoner taking another prisoner as hostage, MCL 750.349a;
- kidnapping, child under 14, MCL 750.350;
- mayhem, MCL 750.397;
- first-degree criminal sexual conduct, MCL 750.520b;
- second-degree criminal sexual conduct, MCL 750.520c;
- third-degree criminal sexual conduct, MCL 750.520d;
- fourth-degree criminal sexual conduct, MCL 750.520e;
- assault with intent to commit criminal sexual conduct, MCL 750.520g;
- armed robbery, MCL 750.529;
- carjacking, MCL 750.529a; and
- unarmed robbery, MCL 750.530; MCL 722.823(3); MCL 722.822(a).



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**Factors to Determine Whether to Divert a Juvenile**

Before a minor is diverted, all of the following factors must be evaluated:

- “(a) The nature of the alleged offense.
- “(b) The minor’s age.
- “(c) The nature of the problem that led to the alleged offense.
- “(d) The minor’s character and conduct.
- “(e) The minor’s behavior in school, family, and group settings.
- “(f) Any prior diversion decisions made concerning the minor and the nature of the minor’s compliance with the diversion agreement.” MCL 722.824(a)–(f).



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## **Diversion Conference**

If the decision is made to divert the minor, a conference must first be held with the minor and the minor's parent, guardian, or custodian to consider alternatives to the filing of a petition with the court or to the authorization of a petition. MCL 722.825(1). The law enforcement official or court intake worker—depending upon who is holding the conference—must notify the minor and the minor's parent, guardian, or custodian of the time and place of the proposed conference and:

- “(a) That participation in the conference or resulting referral plan is voluntary.
- “(b) That an attorney may accompany the minor and the minor's parent, guardian, or custodian at the conference.
- “(c) The alternative referral programs available and the criteria utilized to determine whether to file a petition with the court or to dispose of the petition with a referral.
- “(d) That if diversion is agreed to and the minor complies with the terms of the diversion agreement and the referral plan, a petition cannot be filed with the court, or if a petition has been filed, the petition cannot be authorized.”

MCL 722.825(1)(a)–(d).



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**Diversion Conference** (*continued*)

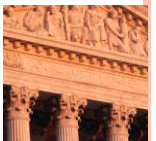
This conference may not be held until after the questioning, if any, of the minor has been completed or after an investigation has been made concerning the alleged offense. Mention of, or promises concerning, diversion shall not be made by a law enforcement official or court intake worker in the presence of the minor or the minor's parent, guardian, or custodian during any questioning of the minor. Information divulged by the minor during the conference or after the diversion is agreed to, but before a petition is filed with or authorized by the court, cannot be used against the minor.

MCL 722.825(2).

**Diversion Agreement**

If a diversion agreement is reached that imposes conditions on the minor, the terms of the agreement must be set forth in writing, dated, and signed by the law enforcement official or court intake worker, the minor, and the minor's parent, guardian, or custodian. MCL 722.825(3).

If a conference is held but an agreement is not reached, a petition may be filed within 30 days, and a petition may be authorized. MCL 722.825(4).





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## **Revocation of Diversion Agreement**

If the minor complies with the terms of the diversion agreement and the referral plan, a petition cannot be filed with the court, or if a petition has been filed, the petition cannot be authorized by the court. MCL 722.825(1)(d). However, “[i]f the minor fails to comply with the terms of the diversion agreement and the referral plan, the law enforcement official or court intake worker may revoke the diversion agreement. If the diversion agreement is revoked, a petition may be filed with the court and a petition may be authorized by the court . . .” MCL 722.825(5).

## **Required Information**

Whenever a law enforcement official or court intake worker diverts a minor, the following information must be filed with the family division in the county in which the minor resides or is found:

- “(a) The minor’s name, address, and date of birth.
- “(b) The act or offense for which the minor was apprehended.
- “(c) The date and place of the act or offense for which the minor was apprehended.
- “(d) The diversion decision made, whether referred or released.
- “(e) The nature of the minor’s compliance with the diversion agreement.” MCL 722.826(1)(a)–(e).

If a diversion agreement is revoked, the law enforcement official or court intake worker must file with the court in which the information, described above, is filed, the fact of and reasons for the revocation. MCL 722.826(2).



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## **Consent Calendar**

The “consent calendar” is a procedural mechanism that allows for informal treatment of cases. If the court, juvenile, and the juvenile’s parent, guardian, or legal custodian agrees to place the case on the consent calendar, the juvenile waives certain rights, including:

- formal notice of charges;
- appointment of an attorney at public expense;
- a jury trial;
- a trial before a judge;
- the presumption of innocence;
- the presentation of proof beyond a reasonable doubt;
- testifying on their own behalf;
- the privilege against self-incrimination (and the right to remain silent);
- presenting witnesses;
- to confront and cross-examine the juvenile’s accusers; and
- to use the subpoena power of the court to compel attendance of witnesses.



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Under the consent calendar:

1. No formal notice is required, except for that required by the Crime Victim's Rights Act.
2. No formal plea may be entered and the court must not enter an adjudication unless it is a violation of the State Vehicle Code.
3. The court shall conduct a consent calendar conference with the juvenile, parent, guardian, or legal custodian to discuss the allegations. The victim may or may not be present.
4. The court may issue a case plan.
5. The case plan may not include removing the juvenile from the custody of their parent, guardian, or legal custodian.
6. No order of disposition may be entered.
7. Upon successful completion of the case plan, the court shall close the case and may destroy all records.
8. If it appears to the court at any time that the proceeding on the consent calendar is not in the best interest of either the juvenile or the public, the court may, without hearing, transfer the case from the consent calendar to the formal calendar on the charges contained in the original petition, citation, or appearance ticket. Statements made by the juvenile during the proceeding on the consent calendar may not be used against the juvenile at trial on the formal calendar on the same charge. MCR 3.932(C).



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**Formal Calendar**

Means the judicial phases other than a delinquency proceeding on the consent calendar, a preliminary inquiry, or a preliminary hearing of a delinquency proceeding. MCR 3.903(A)(10).

The court may authorize a petition to be filed and docketed on the formal calendar if it appears to the court that formal court action is in the best interest of the juvenile and the public . . . At any time before disposition the court may transfer a matter to the consent calendar. MCR 3.932(C).

